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A.B., Appellant)	
)	
and)	Docket No. 16-1163
)	Issued: September 8, 2017
U.S. POSTAL SERVICE, MID-ISLAND)	
POSTAL & DISTRIBUTION CENTER,)	
Melville, NY, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 16, 2016 appellant, through counsel, filed a timely appeal from a February 3, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

³ The Board notes that appellant submitted additional evidence with her request for appeal. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering the new evidence for the first time on appeal pursuant to 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the December 28, 2014 employment incident.

FACTUAL HISTORY

On December 31, 2014 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2014 she strained her left shoulder while attempting to clear a paper jam in the loader of the flats sequencing systems (FSS) machine. She stopped work on December 29, 2014.

With her claim, appellant submitted a December 31, 2014 duty status report (Form CA-17), with no diagnosis listed; a January 14, 2015 request for authorization for treatment of a cervical sprain; and a December 29, 2014 physical therapist's letter of medical necessity.

In a December 29, 2014 report, Dr. Gus Katsigiorgis, an osteopath and orthopedic surgeon, noted a history of appellant reaching for mail stuck in a machine on December 28, 2014 and injuring her left shoulder while unjamming the mail. Examination findings included restricted left shoulder range of motion, positive Hawkins sign, and x-rays negative for a fracture. Dr. Katsigiorgis diagnosed left shoulder impingement, tendinitis rule out tear, and cervical sprain. In a January 12, 2015 work capacity evaluation (Form OWCP-5c), Dr. Katsigiorgis indicated that appellant could not work and that cervical and shoulder diagnostic studies were needed.

In a January 22, 2015 letter, OWCP advised appellant of the deficiencies in her claim and afforded her the opportunity to submit additional factual and medical evidence. This included a detailed narrative medical report from her treating physician which contained a history of the injury and a medical explanation, with objective evidence, of how the reported work incident caused or aggravated the claimed condition. OWCP afforded appellant 30 days to submit such evidence.

In response, OWCP received multiple physical therapy reports from Island Musculoskeletal Care.

By decision dated February 26, 2015, OWCP denied appellant's claim. It found that the medical evidence of record did not establish that the claimed medical condition was causally related to the accepted December 28, 2014 work incident.

On March 17, 2015 OWCP received appellant's March 11, 2015 appeal request form requesting a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted duplicative evidence as well as additional medical records. The new records included a January 22, 2015 left shoulder magnetic resonance imaging (MRI) scan, which contained an impression of left labral tear, physical therapy reports, and authorization requests.

Several medical reports from Dr. Katsigiorgis were received. In a February 11, 2015 report, he provided physical examination findings of the left shoulder and cervical spine. Based upon his physical findings, Dr. Katsigiorgis requested authorization for left shoulder labral repair, arthroscopy. In a March 9, 2015 report, he noted additional physical examination findings of the cervical spine and left shoulder and reported that the MRI scan showed a tear of the anterior labrum and equator. Dr. Katsigiorgis reported that the diagnosed condition was employment related based on the December 28, 2014 work incident as well as no prior history of a left shoulder condition. In his March 9, 2015 duty status report, he diagnosed left shoulder internal derangement and opined that she was totally disabled. In reports dated April 1 and May 6, 2015, Dr. Katsigiorgis provided physical examination findings of the cervical spine, bilateral upper extremities and left shoulder. He continued to request authorization for left shoulder arthroscopy and a cervical spine MRI scan.

In a March 11, 2015 report, Dr. Richard L. Parker, a Board-certified orthopedic surgeon, noted that appellant was a mail handler who reported a history of reaching for jammed mail and that she had injured her left shoulder while at work. He noted that she was not working. Examination findings of spasm, tenderness, restricted range of motion, diminished sensation, and positive Hawkins sign were noted. Dr. Parker diagnosed cervicalgia, herniated nucleus pulposus, cervical radiculopathy, and left shoulder superior labrum, anterior to posterior (SLAP) tear. He opined that appellant's diagnoses were work related and that a cervical spine MRI was needed to rule out herniated nucleus pulposus. Dr. Parker also recommended additional diagnostic studies of the upper extremities.

By decision dated July 23, 2015, an OWCP hearing representative affirmed the February 26, 2015 decision. He found that there was no rationalized medical opinion evidence which explained how the December 28, 2014 work incident caused or contributed to a left shoulder or neck condition.

On November 3, 2015 appellant requested reconsideration by appeal request form dated October 28, 2015. She submitted additional evidence in support of her claim, including an undated witness statement from J.T., a coworker, who indicated that he saw appellant trying to remove a jammed piece of mail from an "ACT [automation compatible tray] loader." He indicated that she had to stand on a platform and reach across a conveyor assembly, but she was unable to remove the jam and had asked him to help her.

In a September 16, 2015 report, Dr. Katsigiorgis provided examination findings of appellant's left shoulder and cervical spine. He also continued to request authorization for left shoulder arthroscopy.

In an October 14, 2015 report, Dr. Parker related that while at work on December 28, 2014, appellant stretched with her left arm/shoulder while clearing a jam and the extended reach had injured her left shoulder, causing a labral tear. He opined that, based upon his examination and the stated mechanism of injury, that appellant's diagnosed conditions were work related. Dr. Parker noted that based on the description of appellant's injury that occurred on December 28, 2014, while reaching and clearing the jam, she sustained a left shoulder injury of a labral tear. He concluded that the diagnosed injury occurred while appellant performed her work task.

By decision dated February 3, 2016, OWCP reviewed the merits of the claim, but denied modification of its prior decision. It found that appellant's treating physicians failed to provide a well-reasoned medical explanation with supporting objective findings as to how the December 28, 2014 employment incident caused or aggravated the diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident that is alleged to have occurred.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

⁴ *Supra* note 1.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

Appellant filed a traumatic injury claim alleging that her left shoulder condition resulted from reaching to clear a jam in a machine at work on December 28, 2014. OWCP accepted that the December 28, 2014 employment incident occurred as alleged, but denied the claim as it found that appellant had not met her burden of proof to establish that her diagnosed medical conditions were causally related to the accepted incident. The issue on appeal is whether the medical evidence of record establishes an injury causally related to the December 28, 2014 employment incident.

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the December 28, 2014 employment incident.

In support of her claim, appellant submitted medical reports from Dr. Katsigiorgis. In his December 29, 2014 report, Dr. Katsigiorgis noted the history of injury, provided physical examination findings, and diagnosed left shoulder impingement, tendinitis rule out tear, and cervical sprain. He did not offer a medical opinion as to how the reported work incident caused or aggravated a diagnosed medical condition. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value in establishing a claim.¹¹

In his March 9, 2015 report, Dr. Katsigiorgis indicated that the MRI scan showed a tear of the anterior labrum and equator. He opined that the diagnosed condition was employment related based on the December 28, 2014 employment incident as well as a no prior history of a left shoulder condition. However, Dr. Katsigiorgis provided no medical rationale as to how the December 28, 2014 employment incident caused the tear of the anterior labrum and equator. Without explaining physiologically how the act of reaching to clear a jam in a machine caused or contributed to the diagnosed condition, Dr. Katsigiorgis's report is of limited probative value.¹²

The other reports from Dr. Katsigiorgis dated February 11, April 1, and May 6, 2015, as well as the December 31, 2014 duty status report and January 12, 2015 work capacity evaluation, all fail to diagnose a medical condition. Therefore, these reports are also insufficient to establish an injury in connection with the accepted incident. While the March 9, 2015 duty status report contained a diagnosis of left shoulder internal derangement, Dr. Katsigiorgis did not provide an opinion on causal relationship and the report is therefore insufficient to establish appellant's claim.

In his March 11, 2015 report, Dr. Parker noted the history of injury and diagnosed cervicgia, herniated nucleus pulposus, cervical radiculopathy, and left shoulder SLAP labral tear. While he opined that appellant's diagnoses were work related and that she needed additional diagnostic studies, he did not provide a well-reasoned medical explanation with supporting objective findings as to how the December 28, 2014 employment incident caused or

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹² See *Lee R. Haywood*, 48 ECAB 145 (1996).

aggravated the diagnosed conditions. This report, therefore, is insufficient to establish that appellant's diagnosed conditions are causally related to the December 28, 2014 employment incident.¹³ Additionally, it is noted that cervicalgia is a pain diagnosis and not a valid medical condition.¹⁴

In his October 14, 2015 report, Dr. Parker reported that the act of extended reaching to clear the jam caused appellant's left shoulder injury of a labral tear. However, his statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how the extension of appellant's left arm would cause the labral tear or aggravate her other previously diagnosed conditions.¹⁵ Dr. Parker's report is insufficient to establish appellant's claim as he failed to provide examination findings, a detailed medical history, description of the employment incident, review of diagnostic studies, and an explanation of how appellant's conditions were caused or aggravated by the December 28, 2014 employment incident.¹⁶ Any medical opinion evidence appellant may submit to support her claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, physiologically caused or aggravated her diagnosed conditions.¹⁷ Dr. Parker's report does not meet that standard and is, therefore, insufficient to meet appellant's burden of proof.

The additional medical evidence of record is of limited probative value. The MRI scan report, while diagnosing a left shoulder condition, fails to offer a medical opinion as to how the reported work incident caused or aggravated a medical condition as it is a diagnostic test.¹⁸ The physical therapy reports are insufficient to establish appellant's claim as physical therapists are not considered physicians under FECA and are not competent to render a medical opinion.¹⁹

The nonmedical evidence, such as the witness statement, is of no probative value on the issue of medical causation. Causal relationship is a medical question that must be established by probative medical opinion from a physician.²⁰

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.²¹ An award of compensation may not

¹³ *T.W.*, Docket No. 15-1603 (issued October 20, 2015).

¹⁴ *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

¹⁵ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁶ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁷ *T.G.*, Docket No. 14-751 (issued October 20, 2014).

¹⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁹ *G.G.*, 58 ECAB 389 (2007). *See* 5 U.S.C. § 8101(2).

²⁰ *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

²¹ *Supra* note 10.

be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²² To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.²³

The evidence of record is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted December 28, 2014 employment incident. OWCP advised appellant of the type of medical evidence required to establish her claim. Appellant failed, however, to submit such evidence. Thus, appellant has failed to meet her burden of proof to establish injury causally related to the December 28, 2014 employment incident.

On appeal counsel contends that appellant's shoulder condition arose from the December 28, 2014 employment incident. As found above appellant has not met her burden of proof to establish causal relationship between the December 28, 2014 employment incident and her diagnosed conditions. None of the medical evidence appellant submitted constituted rationalized medical evidence which alleged to have caused or exacerbated her medical conditions.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the December 28, 2014 employment incident.

²² *D.D.*, 57 ECAB 734 (2006).

²³ *See supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2016 is affirmed.

Issued: September 8, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board